Supreme Court, U.S.
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No. 01-1130

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH RAYMOND ZARAGOZA, JR. AND,
TAMMY ZARAGOZA,

Petitioners,

v.

DANIEL G. DAVIS; MICHAEL D.,
DEMPSEY; DEMPSEY & JOHNSON, P.C.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEALS
SECOND APPELLATE DISTRICT
DIVISION FIVE

PETITION FOR WRIT OF CERTIORARI SUPPLEMENT

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I. BUTLER (1) SHOWS IT REMAINS UNCLEAR WHETHER IT IS FOR THE JURY TO DECIDE WHETHER PROBABLE CAUSE TO ARREST IS TO BE DECIDED BY THE JURY, AS OPPOSED TO, BY THE JUDGE (2) SHOWS A REASONABLE JUROR IN THIS CASE COULD CONCLUDE NO PROBABLE CAUSE TO EXIST, AND, (3) EXEMPLIFIES HOW IN PRACTICE, THERE IS A DIFFERENCE BETWEEN HOW ONE IS TREATED, CONCERNING PROBABLE CAUSE TO ARREST, WHEN ACCUSED OF MOLESTING A CHILD VERSUS OTHER CRIMES; ALTHOUGH, THE LAW DOES NOT DISTINGUISH BETWEEN THE TWO SITUATIONS.

Butler v. Elle 99-335393 (9th Cir. 2/26/2002) decided after the Petition was filed, is instructive on several issues in this case.

The first issue is whether it is up to a jury, or the Court on Summary Judgment, to decide whether probable cause to arrest exists. The weight of authority is that is for the jury to decide the issue. (Pet. pp. 15-17.) However, in Butler the Court ruled it is up to the Court, in decided if qualified immunity exists, to decide whether there was probable cause to arrest. However, if this be so, then the rule that it is for the jury, at trial, to decide whether probable cause to arrest exists, will be rendered a nullity. Once the Court decides the issue relating to qualified immunity, if it decides there is qualified immunity, there is no jury trial; thus, a jury cannot decide the issue.

Butler also shows a reasonable jury could decide probable cause did not exist herein. In Butler, the alleged crimes could have potentially occurred. However, the Ninth Circuit decided that the evidence, that the crime was

committed, was not sufficiently strong to show probable cause to arrest existed.

Herein, the evidence shows that three of the four alleged crimes could not have even been committed. Thus, the evidence of lack of probable cause, herein, is stronger than in Butler. What this shows is that not only could a reasonable juror herein decide thee was not probable cause to arrest; but, there was not probable cause to arrest, herein, as a matter of law.

The difference in the way Butler treated probable cause to arrest therein, and how the Court of Appeal treated probable cause to arrest herein, shows that persons who are unfairly and falsely accused of molesting children, no matter how patently false the allegation, are unfairly held to a different standard than other crimes.

II. RELATED TO EQUAL PROTECTION ISSUES, A NEWLY DISCOVERED CASE SUPPLEMENTS PETITIONERS' PREVIOUS SHOWING PETITIONERS WERE NOT TREATED FAIRLY BY THE CALIFORNIA COURT OF APPEAL.

In the Petition for Writ of Certiorari ("Petition") petitioners showed an instance wherein they were unfairly treated, by the California Court of Appeal; wherein, Court of Appeal Justice Turner, in deciding this case, deviated, from a rule he had discussed, in an article written by him near the time of the issuance of the Opinion. (Pet. p. 28, fn. 20.) Another instance has been found wherein the same Justice, in a previous case, ruled in an opposite manner, on another issue herein.[1]

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[1] Such is not a result of a change in the law; but rather, what could

One issue raised in the petition was that the Court of Appeal failed to apply California law, thereby depriving petitioners the right to equal protection pursuant to the United States Constitution, Fourteenth Amendment. (Pet. pp. 27-29.) One of the areas, to be shown if the Court grants the Petition, regards respondents' breach of fiduciary duty/intentional infliction of emotional distress.

Petitioners pleaded these state law causes of action based upon respondents based upon the same basic facts, respondents abandoning petitioners once respondents realized they had blown the statute of limitation, including the manner in which this occurred.[2] Respondents did not address such causes of action in the summary judgment motions.

However, the Court of Appeal addressed the breach of fiduciary duty cause of action, ruling, by implication, that said cause of action was dependent upon petitioners proving they would have won the underlying action. (Pet. App. p. 11, last paragraph.) The Court of Appeal ignored, and refused to follow, the correct rule; that, (1) respondents could not raise a new defense, on appeal, not raised in their summary judgment motions, and, (2) a cause of action based upon abandonment of a client is not dependent upon whether or not the client would have won the underlying litigation. (See Stanley v. Richmond (1995) 35 Cal.App.4th 1070, 1097.)[3]

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objectively construed as a refusal to follow the law in this case.

[2] The Court of Appeal Opinion notes the breach of fiduciary duty cause of action, but not, the intentional infliction of emotional distress cause of action.

[3] Petitioners exhausted these issues in the Petition for Review to the

Petitioners have discovered, since filing the Petition, that in a published Opinion, Justice Turner took petitioners' position herein, that intentional infliction of emotional distress/breach of fiduciary duty, based upon abandonment of the client, is independent of whether the client would have won the underlying action. McDaniel v. Gile (1991) 230 Cal.App.3d. 363[4]. In McDaniel the attorney abandoned the client; as, she would not have sex with the attorney. McDaniel analysis of causes of action for intentional infliction of emotional distress, and breach of fiduciary duty, for abandonment of the client, was wholly unrelated to whether she would have been successful in the underlying litigation. While that was an issue, in the legal malpractice cause of action in McDaniel, such was independent of the abandonment issues.

As such, Justice Turner refused to apply a rule of law, herein, which he had followed in McDaniel.[5] While petitioners recognize a reviewing court prefers not to see an

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California Supreme Court.

[4] While this case is newly discovered caselaw, as opposed to newly decided caselaw, it is unclear whether reference to such complies with this Court's rules concerning supplementing a Petition for Writ of Certiorari. However, even it technically does not comply with the rule, it is suggested that this Court has the inherent power to, and should, consider such. That is because is shows, due to the fact that this is a second instance wherein one of the Court of Appeal Justices deciding this case failed to follow his own previous statements of the law in finding against petitioners, that petitioner's did not receive a fair hearing in the California Court of Appeal.

[5] Of course, the petition shows numerous other instances wherein the California Court of Appeal refused to follow the law.

argument that a lower court has deliberately refused to follow the law, it cannot be ignored herein that a reasonable person could objectively determine, based upon the two instances wherein Justice Turner deviated, in this case, from rules of law which he had previously acknowledged to be correct.

While petitioners also recognize that this Court cannot review every case simply upon the basis that the Court of Appeal did not fairly decide a case, that situation herein, when coupled with other factors which show that this Court should grant Certiorari, is a factor this Court should consider.

III. CONCLUSION.

In the 1980's the "witchhunt hysteria" concerning child sexual abuse centered around day care centers.[6] In the 1990's the "witchhunt hysteria" concerning child sexual abuse centered around coaches of athletic teams. Now, in the 2000's the "witchhunt hysteria revolves around Catholic Priests.[7] To say the media is currently deluged with stories

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[6] The comments regarding "witchhunt hysteria" do not refer to cases wherein there is appropriate investigation, analysis and prosecution of cases wherein their truly is reason to believe the alleged crime was committed. Nor does use of the phrase "witchhunt hysteria" mean to infer that the great majority of allegations are true. Petitioner's are certainly as opposed to child molestation as anyone else. However, the fact that most allegations may be true, and involve a heinous crime, does not mean that it is permissible to ruin the life of someone who is falsely accused. The "witchhunt hysteria" refers to situations wherein, as occurred with Mr. Zaragoza, there is prosecution, without proper investigation or analysis, and the concealment of exculpatory evidence, in cases wherein it is blatantly clear that the alleged molestation did not happen.

[7] Again, this is not to imply that the majority of accusations that have

concerning Catholic Priests molesting children would be a huge understatement. It appears that some accused Priests are already being considered to be guilty by mere accusation, by the media, law enforcement and even the Church itself. Priests are expressing the concern that fear of false allegations of child molestation are interfering with their ability to do their jobs in ministering the needs of their parishioners.

> "Roman Catholic priests in Los Angeles expressed frustration and anguish Friday as they attended a mandatory archdiocesan workshop on sex abuse ordered by Cardinal Roger M. Mahony.
>
> ... many priests already feel under siege--victims of the national furor over clergy sex abuse that began earlier this year in Boston.
>
> 'Catholic priests feel they're being picked on,' said Father John Raab of the Claretian Renewal Center in Los Angeles, one of more than 200 priests who attended the workshop at St. Agatha Church in southwest Los Angeles. 'People feel that, because the Catholic Church has so much centralized money, it gets the lawsuits and news."Several priests lamented that the furor has caused them to shrink back from normal gestures of affection, such as hugging children. Father

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been, and will be, forthcoming are not true. However, there will undoubtedly be false allegations by some (1) who believe they may be able to make money in lawsuits, (2) who are mentally ill, or, (3) may have some other vendetta or motive to lie.

Roger Labonte of Holy Family Church in South Pasadena said he has found himself hesitating over whether to place his hands on a parishioner's head during absolution rituals, straighten an altar server's collar or even take some neighborhood children to a movie. After Mass last Sunday, he said, several children ran to him, hugging his legs, but he kept his arms straight at his side.

... Labonte, a Canadian native who said that touch is important in his culture, said the self-imposed restrictions are 'just not me.' 'I can't pick the children up and hug them and squeeze them,' said Labonte, 48, who quit an accounting career eight years ago to become a priest and is particularly popular with children, who are drawn to his youthful energy. 'I think we're guilty until proven innocent[8] and that's a sad thing.'

... For many of the priests, the workshop provided the first time to gather and share their feelings since allegations of widespread abuse in the Boston Archdiocese fanned the issue into a national firestorm. During a question-and-answer period, according to those present, priests raised several concerns, including whether to hug a child on a playground, keep confessions confidential and whether innocent priests would be duly protected with legal representation.

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[8] He is right.

> ... Despite the news focus on accountability, several of the priests said they felt besieged by a public perception of rampant sex abuse in the priesthood. Father Greg Boyle, who helps rehabilitate hundreds of gang members through jobs in his Homeboy Industries, said he now feels solidarity with the legions of good Los Angeles police officers who were tainted by a few bad cops in the Rampart corruption scandal. 'You want to say, 'That's not me,'Boyle said." (Los Angeles Times, March 16, 2002.)

Whether it be a school teacher, an athletic coach, a member of the clergy, or, as the case of Mr. Zaragoza, a father trying to keep his daughter from destroying her life, no one should be subject to prosecution for blatantly false allegations of molestation.

Dated: April 3, 2002

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